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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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D. Laksen Sirimanne

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EXAMINER

WEATHERBY, ELLSWORTH

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

03/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of Disposition of Claims: Claims pending in the application are 84-118,120-125,127-129,142-144,172-198,224-225,229,232-233,235 and 236.

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 84-118,120-125,127-129,142-144,172-198,224-225,229,232-233,235 and 236.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 84-118, 120-125, 127-129, 142-144, 172-198, 229, 232-233, and 235-236 are drawn to a cavity marking insertable device.

Group 2, claim(s) 224-225 are drawn to a process for making an insertable device.

2. The inventions listed as Groups 1 and 2 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The process for making an insertable device can be used to make a plurality of insertable device not necessarily related to the cavity marking devices of Group 1. Furthermore, a process of making an insertable device is materially different subject matter than that claimed in Group 1.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Art Unit: 3737

Invention A. (Claims 84-89, 92-118, 120-125, 127-129, 142-144, 172-174, 179-198, 229, 232-233, 235-236): A method and device for marking a cavity with and insertable device.

Invention B. (Claims 90-91 and 175-178): A stereotactic insertable device for marking a cavity.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. The claims are deemed to correspond to the species listed above in the following manner:

Inventions A & B are directed to related products. The related inventions are distinct because the inventions as claimed can have materially different mode of operation and/or function.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Invention A can be used in any manual biopsy or image guided operation. However, Invention B requires positioning using a stereotactic device.

Conclusion

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLSWORTH WEATHERBY whose telephone number is (571) 272-2248. The examiner can normally be reached on M-F 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3737

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian L Casler/
Supervisory Patent Examiner, Art
Unit 3737

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